

ACS Submission: Administrative Penalties - Statement of Policy

The Association of Convenience Stores (ACS) welcomes the opportunity to respond to the consultation on the Administrative Penalties: Statement of Policy. ACS represents 8,354 convenience stores in the UK including Rontec, Motor Fuel Group and thousands of independent retailers. The forecourt sector is an important element of the UK's economy, providing over 89,000 jobs and £4.9bn in total sales.¹

We have worked with DESNZ and the CMA in the development of the fuel monitoring function and ensured our sector contributed substantially to this endeavour. We also worked with the CMA and submitted evidence to its Road Fuel Market Study, the conclusion of which led to this policy being taken forward.²

ACS supports the establishment of the fuel monitor. We agree that penalties must be given to retailers to tackle non-compliance with information requests, however, it is important that these are fair and proportionate to incentivise cooperation between industry and government. The factors which the CMA would be required to take into account when considering penalties, as set out in the consultation document, are important and should be taken forward. These include, the seriousness of a breach, business size and resource capacity and whether the breach is remedied after it has been discovered. The following sets out our broader position on the enforcement approach.

1. First Offence Consideration

We strongly recommend that the CMA exercise leniency in cases of first-time offences, particularly where the breach is minor or unintentional. Businesses, especially smaller ones, may not always have the necessary resources or understanding to fully comply with complex regulations immediately. A warning or an opportunity to rectify the mistake should precede any imposition of penalties. This approach would foster a cooperative relationship between the CMA and businesses, encouraging voluntary compliance rather than instilling fear of severe repercussions for inadvertent errors.

2. Proportionality of Penalties

It is essential that the penalties imposed are proportionate to the severity and intent of the breach. Minor administrative oversights should not attract the same penalties as deliberate non-compliance. We propose a tiered penalty system that differentiates between the types of breaches and considers the context in which they occur. Such a system would ensure fairness and maintain the credibility of the CMA's enforcement processes.

3. Clear Guidance

We call for clear and transparent guidance on how penalties are determined. It is crucial that businesses understand the criteria used to assess fines and the circumstances under which leniency might be applied. This would allow businesses to better align their practices with regulatory expectations and reduce the likelihood of unintentional breaches.

4. Opportunity for Remediation

We suggest that businesses be given an opportunity to remedy any issues before penalties are imposed. This could include a defined period during which the business can correct any violations after they have been identified by the CMA. Providing a chance to rectify issues would encourage

¹ [ACS Forecourt Report 2023.](#)

² [CMA Road Fuel Market Study 2022-2023.](#)

businesses to comply without facing immediate financial penalties, particularly in cases where breaches are non-deliberate.

5. Consultation and Appeals

It is important that there is a clear and fair process for appealing penalties. Businesses should have the ability to contest fines if they believe they have been unfairly assessed. Furthermore, we advocate for ongoing consultation between the CMA and industry stakeholders, particularly for any revisions to the penalty policy. This will ensure that the policy remains relevant and effective in addressing the concerns of all parties involved.

6. Impact on Small Businesses

We would like to highlight the potential impact of penalties on small businesses, which may not have the same resources as larger corporations. We propose that the CMA consider the size and economic capacity of the business when determining fines, to avoid disproportionately harming small retailers. This consideration is vital to ensure that penalties do not unduly burden those businesses that are already operating with limited resources.

7. Engagement in Good Faith

We argue that businesses that engage in good faith and cooperate fully with investigations, should be treated more leniently if any compliance issues arise. Recognising and rewarding genuine efforts to comply can promote a culture of cooperation and trust between businesses and the CMA. This approach would encourage businesses to be proactive in their engagement with the regulator, knowing that their good faith efforts would be considered in the event of any infractions.

8. Reasonable Timeframes

We request that the CMA allows reasonable timeframes for compliance following the issuance of any new requirements or notices. This is particularly important for smaller businesses, which may need additional time to adapt their practices and systems to meet new regulatory standards. Sufficient time to comply will help businesses make the necessary adjustments without undue pressure or financial strain, thereby reducing the risk of inadvertent non-compliance.

In conclusion, we urge the CMA to consider the constraints faced by businesses, particularly small and independent retailers, when developing and applying penalties. By focusing on proportionality, offering clear guidance, and providing opportunities for remediation and appeal, the CMA can create an enforcement framework that is both effective and fair. We also reiterate that the use of penalties should be reserved for situations where there is a clear and deliberate breach, or where a business has failed to engage with the CMA in good faith. This balanced approach will help ensure that the administrative penalties policy supports compliance without placing undue burdens on businesses that are making genuine efforts to comply with the law.

We welcome the opportunity for further engagement on this matter and are happy to discuss our submission in more detail. If you would like to arrange a meeting with ACS or require any further information, please contact ACS Public Affairs Executive Willem van de Ven (willem.vandeven@acs.org.uk).